

VALIANT RESOURCES, INC.

IBLA 81-579

Decided July 28, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. AA-23762 through AA-23905.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of intervening inclement weather, loss must be borne by claimant.

APPEARANCES: Glenn R. Yeadon, Solicitor, Vancouver, B.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Valiant Resources, Inc., appeals from the Alaska State Office, Bureau of Land Management (BLM), decision dated March 4, 1981, declaring the AA-23762 through AA-23905 lode mining claims abandoned and void because evidence of assessment work as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2, had not been filed with BLM on or before December 30, 1980.

Appellant asserts that it initiated transmittal of the required proof of assessment work from Vancouver to Anchorage on or about December 30, 1980, but that because of bad weather, the flight carrying the documents was unable to land in Anchorage with the result that filing was not completed until January 2, 1981.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper BLM office within the specified time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation.

The fact that appellant's documents may have been prevented from timely reaching the BLM office by bad weather cannot excuse late filings. The Board has repeatedly held that a mining claimant, having chosen his means of delivery (normally the Postal Service), must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Doris McFall, 55 IBLA 110 (1981). In the case at bar, appellant allowed only 1 or at best 2 days for its filings to reach Anchorage. Although it employed courier service and air carriers rather than the Postal Service, it chose the means of delivery and the date of transmittal and must bear the consequences of untimely delivery.

In any event, even in cases of severe hardship, this Board is not empowered to make exceptions to the requirements of the statute. Thus, the Secretary of the Department of the Interior does not have the authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the consequences of failure to comply with the statute. Lyman Mining Co., 54 IBLA 165 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

